

**Docket Nos:** 07-0539  
and 07-0540  
**Bench Date:** 3/26/08  
**Deadline:** 3/27/08

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**TO:** The Commission

**FROM:** Claudia E. Sainsot and Ethan Kimbrel<sup>1</sup>  
Administrative Law Judges

**DATE:** March 19, 2008

**SUBJECT:** Central Illinois Light Company d/b/a AmerenCILCO, Central  
Illinois Public Service Company d/b/a AmerenCIPS and  
Illinois Power Company d/b/a AmerenIP

Approval of Energy Efficiency and Demand Response Plan.

Commonwealth Edison Company

Petition for Approval of the Energy Efficiency and Demand-  
Response Plan pursuant to Section 12-103(f) of the Public  
Utilities Act.

Petitions for Rehearing

**Recommendation:** Grant Rehearing and enter the attached Orders that give the  
Petitioners the relief they seek.

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This Memo discusses the Petitions for Rehearing filed jointly by Commission Staff and the utilities on March 7, 2008. The final Orders in these two dockets issued on February 6, 2008. Only one issue is raised in the Petitions and it is the same issue in both Petitions. Also, the issue raised is a legal one. Therefore, for this issue to be resolved, there is no need for a hearing. Instead, Orders in the two dockets that modify this Commission's Orders of February 6, 2008 will give the petitioners all of the relief they seek. Accordingly, we have attached Orders to this Memo that grant the relief requested in the Petitions for Rehearing.

Staff, as well as the Ameren Illinois Utility Companies, ("Ameren") and the Commonwealth Edison Company, ("ComEd") take issue with the conclusion in the final Orders in the docket filed by Ameren (docket 07-0539) and the docket filed by ComEd (docket 07-0540) seeking approval of their Energy Efficiency and Demand Response

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<sup>1</sup> Ryan Neri, a legal extern, assisted in the preparation of this Memo and the attached Orders.

Plans. Specifically, this conclusion was that the Commission has control over the hiring and firing of the independent evaluator that is required by law. (See, Petitions for Rehearing, dockets 07-0539 and 07-0540, both, at 2; final Order in 07-0539 at 33; final Order in 07-0540 at 45).

Section 12-103(f)(7) of the new statute governing energy efficiency and demand response requires a utility to provide for an “annual independent evaluation of the performance of the cost-effectiveness of a utility’s portfolio of measures and the Department’s (the Illinois Department of Commerce and Economic Opportunity’s) portfolio of measures.” (220 ILCS 5/12-103(f)(7)). Based on this language, the final Orders in both dockets concluded that General Assembly intended to require that this Commission control the hiring and firing of the independent evaluator. (See, final Orders in 07-0539 at 33; 07-0540 at 45).

The Petitioners made several arguments, but there is one argument presented in both petitions that is compelling, thereby obviating the necessity to discuss the other arguments. That argument is, essentially, that if this Commission were involved in the day-to-day operations regarding the hiring of the independent evaluator, such participation would jeopardize critical pre-implementation efforts to develop systems for protocols, the development of tracking systems and other aspects of measurement and evaluation. (Petitions for Rehearing at 5-6).

The Petitioners point out that because this Commission is a state agency, it is subject to extensive regulation pursuant to the Illinois Procurement Code concerning the hiring of a third-party contractor. (See, 30 ILCS 500/1-1 *et seq.*). However, the new statute requires utilities to implement their Energy Efficiency and Demand Response plans by June 1, 2008. (See, *e.g.*, 220 ILCS 5/12-103(b)). They aver that the fact that Section 12-103 of the Act only provides for a few months between the time when the Commission must approve or deny approval of a utility’s Energy Efficiency/Demand Response Plan (no later than February 15, 2008) and when a utility must commence operation of such a plan (no later than June 1, 2008) indicates that the General Assembly did not intend for the Commission to hire the evaluator. This is true, the Petitioners maintain, because it is simply not possible to hire the evaluator within this compressed timeframe and also comply with the Illinois Procurement Code. (Petitions for Rehearing at 5-6).

### **The AG/Cub Responses**

The Illinois Attorney General (the “AG”) and the Citizens Utility Board (“CUB”) filed joint responses to the Petitions for Rehearing. Therein, they took no position regarding the factual and legal matters raised in the Petitions for Rehearing. (Dockets 07-0539 and 07-0540, Responses at 2). Instead, they stated that, in conjunction with the Joint Petitioners and the Stakeholder Advisory Committee,<sup>2</sup> they have reached a consensus regarding a process that could be used to expedite the hiring of an independent evaluator in both dockets. This process, they contend, ensures

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<sup>2</sup> (See, final Orders in 07-0539 at 23-25; 07-0540 at 30-34 regarding this Committee.).

Commission control over the independent evaluator and nevertheless avoids the delay that would occur, if the day-to-day operations concerning the hiring of this evaluator were to be conducted directly by the Commission. (*Id.*). This process is as follows:

ComEd and Ameren, would develop, with input from the Stakeholder Advisory Committee, a Request for Proposals (an “RFP”) to solicit bids for an independent evaluator;

ComEd and Ameren would then file the RFPs as a compliance filing in their respective dockets;

ComEd and Ameren would select, with stakeholder input, an independent evaluator;

ComEd and Ameren would then submit, as compliance filings in both dockets, their contracts with the independent evaluator(s), which would be selected from the firms that responded to the RFP;

These contracts must expressly provide that the Commission has the right to: a) approve or reject the contract; b) direct ComEd and Ameren to terminate the evaluator, if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation; and c) approve any action by Ameren or ComEd that would result in termination of the evaluator during the term of the contract.

(*Id.*).

Ameren filed a Reply, in which, it agreed that this process should be used. Ameren underscored the accuracy of the statements made by the AG/CUB in their Responses to the Petition for Rehearing regarding the consensus reached as to the procedure set forth above. Ameren stated that “It is fair to say there have been encouraging discussions surrounding the protocols to consider in retaining an independent evaluator.” Also:

[I]t is . . . Ameren’s intention to remain faithful to the Commission’s Final Order whereby (Ameren’s) advisory group would be in place to consider matters pertaining to the retention or activities of an independent evaluator . . . but to take into account the sentiments of stakeholders and other interested parties in the context of an advisory groups setting.

(Docket 07-0539, Ameren Reply at 2). ComEd, as well, averred that the statements made by the AG/CUB were accurate. Additionally ComEd concurs with the AG/CUB that this process should be used. Staff, also, stated that it has no objection to the procedure proposed by the AG and CUB. (Dockets 07-0539 and 07-0540, Staff Replies at 2).

Thus, no party objected to the process proffered by the AG/CUB. It is also a relatively simple process, which helps to ensure that the utilities will be able to meet the June 1, 2008 statutory deadline.

The AG/CUB approach also meaningfully defines the conclusions in the final Orders in these dockets that the Commission has control over the hiring and firing of the independent evaluator. Staff and the utilities averred in the Petitions for Rehearing that this Commission erroneously concluded that that this Commission has control over the hiring and firing of the independent evaluator. However, such an approach may not be desirable because it would leave unfettered discretion regarding the independent evaluator to the utilities, making the independence of the evaluator questionable. The approach used by the AG/CUB gives this Commission control over the hiring and firing of the independent evaluator on a supervisory level, (as it often has) as opposed to being an active participant in the day-to-day activities involved in the decisions necessary to hire and fire this evaluator. Pursuant to this approach, this Commission retains control over the hiring and firing decisions regarding this evaluator, and, it relinquishes the day to day activities involved in those decision-making processes. The attached Orders clarify the rulings in these two dockets in the manner that was proffered by the AG/CUB and agreed to by the parties and by Commission Staff.

Accordingly, we recommend that the Commission grant rehearing and enter the attached Orders in dockets 07-0539 and 07-0540 that give the Petitioners the relief they seek.

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